



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1293 OF 2002**

**IN THE MATTER OF THE ESTATE OF DANIEL W. KAMAU (DECEASED)**

SUSAN WANDIA GICHERU.....1<sup>ST</sup> APPLICANT

SOPHIA WAMBUI KIMANI.....2<sup>ND</sup> APPLICANT

NELLY WANJIKU THIONGO.....3<sup>RD</sup> APPLICANT

**VERSUS**

ROBERT GITHINJI WANGEWA.....1<sup>ST</sup> RESPONDENT

PATRICK KIBE WANGEWA.....2<sup>ND</sup> RESPONDENT

BETHWEL N. WANGEWA.....3<sup>RD</sup> RESPONDENT

PETER KAMUYU WANGEWA.....4<sup>TH</sup> RESPONDENT

**JUDGMENT**

1. The deceased Daniel W. Kamau died intestate on 21<sup>st</sup> June 2001. On 27<sup>th</sup> May 2002 the respondents Robert G. Wangewa, Patrick K. Wangewa, Bethwel N. Wangewa and Peter K. Wangewa (all being four of the six sons of the deceased) petitioned the court for the grant of letters of administration intestate. The grant was issued on 25<sup>th</sup> September 2002. The estate comprised -

- a. Dagoretti/Kangemi/1236;
- b. Dagoretti/Riruta/51
- c. Dagoretti/Karandini/68;
- d. Dagoretti/Kangemi/1229;
- e. Dagoretti/Riruta/1230;
- f. Dagoretti/Kangemi/1231;
- g. Dagoretti/Kangemi/1232;
- h. Dagoretti/Kangemi/1234;

i. Dagoretti/Kangemi/1235; and

j. a motor vehicle.

2. The grant was confirmed on 9<sup>th</sup> June 2003. The estate was distributed to the respondents and their two brothers (James Kamau Wangewa and Stephen Gachomo Wangewa).

3. The applicants Susan Wandia Gicheru, Sophia Wambui Kimani and Nelly Wanjiku Thiongo are three of the daughters of the deceased. The other daughters are Jacinta Wanjiku Muturi, Lydia Waruguru Wangewa and Esther Wairimu Kamau. On 21<sup>st</sup> November 2017 they (the applicants) applied to revoke and/or annul the grant issued and confirmed to the respondents. The grounds were that they were daughters of the deceased, and therefore beneficiaries of his estate, and yet this fact had been concealed to the court by the respondents at the time of issue and confirmation of the grant; that they were not involved in the petition for the grant and all subsequent proceedings, and had been consequently disinherited; and therefore the entire process had been fraudulent on the part of the respondents.

4. The respondents swore a replying affidavit to state that before the deceased died he had, in the presence of all family members, decreed that all his property would, upon his death, go to his sons. Their mother was still alive. She was to have a life interest in the property. The applicants, it was deposed, were present and knew about this decree. This was why the respondents did not see the need to include them in the petition and succession process. They wondered why it had taken 15 years for the applicants to file this summons. They have since shared out the estate and developed their portions substantially. They opposed the application. They were supported by their sister Esther Wairimu Kamau who swore an affidavit in response to the application.

5. I have considered the application and the respective affidavits. It is not in dispute that the applicants were daughters of the deceased. When the respondents filed the petition there was no indication that the deceased had any daughters. The applicants did not sign the petition. They had not renounced their right to petition for the grant. Under **section 51(2)(g) of the Law of Succession Act (Cap 160) and rule 7(1)(e) of the Probate and Administration Rules**, the application for grant was mandatorily required to have names and addresses of all the children (whether sons or daughters) of the deceased. There was therefore material non-disclosure of the fact that the applicants did exist as daughters of the deceased.

6. The deceased may have decreed that the daughters should not benefit in his estate upon death. But that did not excuse the respondents from following the law regarding the information required in a petition for grant of letters of administration intestate. Secondly, the respondents came to court on the basis that this was an intestate succession. It is true that as much as possible the wishes of a deceased regarding how his estate should devolve upon death should be respected. However, it is also true that a deceased should not express a wish whose effect would be to disinherit his children who would ordinarily be expected to benefit from the estate.

7. Even assuming that the deceased left a Will in which he asked that, upon death all his estate should go to his sons and that the daughters should not inherit anything, the daughters, or any of them, would be entitled to contest that Will in subsequent succession proceedings.

8. In all, therefore, I determine that the proceedings leading to the grant and its confirmation were materially and substantially defective owing to the omission to include the applicants, failure to disclose that they existed and because they had not-renounced their right to petition for the grant and to renounce their claim to the estate. Consequently, I revoke the grant issued to the respondents on 25<sup>th</sup> September 2002. I set aside the certificate of confirmation issued on 9<sup>th</sup> June 2003 and amended on 18<sup>th</sup> June 2014.

9. A fresh grant shall issue in the joint names of Robert G. Wangewa, Patrick K. Wangewa, Susan Wandia Gicheru and Sophia Wambui Kimani. The grantees, or any of them, shall within 60 days file application for the confirmation of the grant, proposing the mode of distribution of the estate of the deceased. Such application shall be served on all the children of the deceased who shall be at liberty to file response within 30 days.

10. In the meantime, the estate of the deceased (now in the names of the respondents and their brothers) shall be preserved until there is final distribution, or until further orders.

11. This is a family dispute. I make no orders as to costs.

**DATED and DELIVERED at NAIROBI this 23<sup>RD</sup> day of SEPTEMBER, 2019.**

**A.O. MUCHELULE**

**JUDGE**